

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

ALPHONSO MONTGOMERY, JR.,

Plaintiff,

v.

CASE NO. 17-3202-SAC

TERESA MARKOS, et al.,

Defendants.

ORDER

Plaintiff proceeds *pro se* and *in forma pauperis* in this prisoner civil rights action. On May 1, 2018, the Court entered a Memorandum and Order and Order to Show Cause (Doc. 8) (“MOSC”), granting Plaintiff until May 28, 2018, in which to show good cause why Plaintiff’s Amended Complaint (Doc. 6) should not be dismissed for the reasons stated in the MOSC. The Court also granted Plaintiff until May 28, 2018, in which to file a complete and proper second amended complaint to cure all the deficiencies discussed in the MOSC.

The Court granted Plaintiff several extensions of time to respond to the MOSC. On July 3, 2018, the Court entered an Order (Doc. 15) staying this matter pending a ruling by the Kansas Court of Appeals on Plaintiff’s criminal case. The Order also instructed Plaintiff to notify the Court when such a ruling was made to enable to Court to set a new response deadline for the MOSC. Although Plaintiff failed to notify the Court, the Court entered an Order (Doc. 16) on April 5, 2019, noting that the docket of the Kansas Court of Appeals reflected that the court affirmed Plaintiff’s sentence on March 22, 2019. *See State v. Montgomery*, No. 118558 (Kan. Ct. App. March 22, 2019). The Court ordered Plaintiff to respond to the MOSC by April 26, 2019. (Doc. 16.)

The Court’s Order at Doc. 16 was mailed to Plaintiff at his current address of record and

was returned as undeliverable. (Docs. 17, 18.) Because Plaintiff failed to respond to the MOSC and failed to give the Court a Notice of Change of Address, the Court entered a Memorandum and Order (Doc. 19) and Judgment (Doc. 20) dismissing this case on April 30, 2019. Plaintiff filed a motion (Doc. 23) asking the Court to set aside the dismissal of his case, alleging that he was reincarcerated and was unable to provide the Court with a timely Notice of Change of Address due to a lack of resources and mailing supplies. Plaintiff also alleged that he filed a petition for review of his state criminal case with the Kansas Supreme Court and that the petition had not been ruled on. The Court granted Plaintiff's motion and directed Plaintiff to notify the Court when he receives a ruling on his petition from the Kansas Supreme Court, to enable the Court to set a new response deadline for the MOSC. (Doc. 24.)

Although Plaintiff did not notify the Court, the docket of the Kansas Appellate Courts reflects that Plaintiff's Petition for Review was denied on December 6, 2019. *See State v. Montgomery*, No. 118558 (Kan. Ct. App. Dec. 6, 2019). The Court therefore orders Plaintiff to respond to the Court's MOSC at Doc. 8 by January 6, 2020. If Plaintiff does not respond within the allowed time, this matter will be decided based upon the current deficient Amended Complaint and may be dismissed without further notice.

IT IS THEREFORE ORDERED THAT Plaintiff is granted until **January 6, 2020**, to respond to the Court's MOSC at Doc. 8.

IT IS SO ORDERED.

Dated December 13, 2019, in Topeka, Kansas.

s/ Sam A. Crow
Sam A. Crow
U.S. Senior District Judge